IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 166 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAWOOD OSMAN KUMBHAR

Versus

UMAR AHMAD JUNEJA

Appearance:

1. Criminal Revision Application No. 166 of 2003

MR BB NAIK for Petitioner No. 1

MR NV ANJARIA for Respondent No. 1-9,11-15

DELETED for Respondent No. 10

MR I.M.PANDYA, APP for Respondent No. 16

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 01/03/2004

ORAL JUDGEMENT

Heard learned counsel appearing for the

petitioner Mr. B.B.Naik and learned advocate Mr. N.V.Anjaria appearing for Respondent Nos. 1 to 9 and 11 to 15. Name of Respondent No.10 has been deleted vide order dated 26.8.2003.

2. The present petitioner is the original complainant of first information report registered with Mandvi Police Station against the respondents being Crime Register No. I-39 of 2001. It is in connection with an incident occurred on 7.4.2001 and after the investigation, persons named in the complaint have been charge sheeted for the offences punishable under Sections 325, 323, 504, 506(2), 143, 147 and 149 of IPC and also for the offences punishable under Section 135 of Bombay Police Act. For the same incident one another offence was also came to be registered with the very police station being Crime Register I-38 of 2001 for the offences punishable under Sections 302, 323, 324, 307, 243, 147, 148, 149, 504, 506(2) of IPC and Section 135 of Bombay Police Act.

3. The grievance raised by the present petitioner in the memo of revision is that though accused of both these cases after charge sheet committed to the Court of Sessions where required to be tried simultaneously, i.e. one after another, but the learned Sessions Judge in ignorance of the legal obligation has decided one of this cross sessions case by judgement dated 9.1.2003. The learned Judge while deciding the Sessions Case No. 15 of 2002 has acquitted the accused.

4. Without challenging the judgement on merit at this stage, the original complainant has challenged the order of acquittal on its propriety and the jurisdictional error committed by the learned Sessions Judge. It is submitted that the learned Sessions Judge was pointed out with the legal obligation even then the learned Judge has acquitted the set of accused persons of Sessions Case No. 15 of 2002 keeping the trial pending of the another Sessions Case registered on the strength of CR No. I-38 of 2001. This has resulted into serious prejudice. During the course of submissions, learned advocate Mr. Naik, in support of the main ground agitated in the memo of revision has placed reliance on the decision reported in case of Sudhir & Others v. State of Madh. Pradesh, AIR 2001 SC 826 and drawn the attention of the Court to the reliefs prayed in para 9 of the memo of revision. I would like to quote the main two prayers while appreciating the contentions raised before the Court by Mr. Naik:

(A) Be pleased to quash and set aside the judgement and order dated 9.1.2003, passed by the learned Additional Sessions Judge, Fast Tract, Kutch at Bhuj, in Sessions Case No. 15 of 2002.

(B) Your Lordships may be pleased to remand the matter back to the learned Additional Sessions Judge with appropriate directions to pronounce judgements on the same day in Sessions Case No. 11 of 2001 and in Sessions Case No. 15 of 2002 after completing the recording of evidence in Sessions Case No.11 of 2001 and after hearing the arguments in both the cases.

5. In case of Sudhir (supra), the Supreme Court has observed that case and counter case relating to same incident even one of them is not exclusively triable by Sessions Court should be tried together. It is not mandatory for sessions Court to transfer said case to Chief Judicial Magistrate and the Sessions Judge has power to try such offence under Penal Code. Undisputedly, in the present case, both the cases have been committed to the court of Sessions by the learned Magistrate in exercise of powers vested with the learned Magistrate under Section 209 Cr.P.C. and undisputedly, both the cases arising out of the same incident occurred on 7th April, 2001 were before the same Judge.

6. While dealing with the case of Sudhir (supra), in para 8 of the decision, the Supreme Court has observed as under:

"It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same Court by pronouncing judgements on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called "case and counter case" by some High Courts and "cross cases" by some other High Courts. Way back in nineteen hundred and twenties a Division Bench of the Madras High Court (Waller and Cornish, JJ) made a suggestion (In Re Goriparthi Krishtamma 1929 Mad WN 881) that "a case and counter case arising out of the same affair should always, if practicable, be tried by the same Court; and each party would represent themselves as having been the innocent victims of the aggression of the other."

The Apex Court has referred the decision of

Madras High Court in the case of Kri-shna Pannadi v. Emperor, AIR 1930 Madras 190 and observed that there may not be a clear law in this regard as to what procedure to try counter cases should be followed. The madras High Court in the said case has observed as under:

> "There is no clear law as regards the procedure in counter cases, a defect which the legislature ought to remedy. It is a generally recognized rule that such cases should be tried in quick succession by the same Judge, who should not pronounce judgement till the hearing of both cases is finished." (emphasis by this Court)

The ratio of the decision reflected in para 10 of the cited decision in case of Sudhir (supra), whereby the Supreme Court has simultaneously expressed its anxiety that this needs to be incorporated in the procedural law itself. The Apex Court through M/s. Justice K.T.Thomas and R.P.Sethi, JJ has cited that;

> "We are unable to understand why the legislature is still parrying to incorporate such a salubrious practice as a statutory requirement in the Code. The practical reasons for adopting a procedure that such cross cases shall be tried by the same Court, can be summarised thus: (1) It staves off the danger of an accused being convicted before his whole case is before the Court. (2) It deters conflicting judgements being delivered upon similar facts; and (3) In reality the case and the counter case are, to all intents and purposes, different or conflicting versions of one incident.

In fact, many High Courts have reiterated the need to follow the said practice as a necessary legal requirement for preventing conflicting decisions regarding one incident. This Court has given its approval to the said practice in Nathi Lal v. State of U.P., 1990 Supp SCC 145. The procedure to be followed in such a situation has been succinctly delineated in the said decision and it can be extracted here:

> "We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both cross cases one after the other. After the recording of evidence in one case is

> completed, he must hear the arguments but he must reserve the judgement. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgement in that case. The same learned Judge must thereafter dispose of the matters by two separate judgements. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgements must be pronounced by the same learned Judge one after the other."

7. According to learned Advocate Mr. Naik, the pronouncement of judgement in Sessions Case No. 15 of 2002 itself is a gross error committed in light of the above settled legal proposition. So, without entering into the merit, the judgement should be quashed and order of acquittal recorded by the learned Sessions Judge requires to be turned down with appropriate directions prayed in para 9 (B) of memo of revision, referred hereinabove.

8. Learned APP Mr. I.M.Pandya, while dealing with the say of the original complainant has fairly accepted that the learned Judge could have kept the judgement pending in Sessions Case No. 15 of 2002 especially when the recording of evidence in other case was yet to begin. I am told that recording of evidence now is over in another cross case, therefore, the learned Sessions Judge should be directed to pronounce the judgement in both the cases simultaneously conferring liberty obviously to the learned Sessions Judge in appreciating the evidence afresh in which the judgement is already pronounced, otherwise, it would not be either justified or proper for this Court to ask the learned Sessions Judge to take out a fresh print of the same decision and to give effect on the date of pronouncement. If things are required to be placed on correct track, then the same should be with all requirement, spirit and anxiety. So, now it will be

obligatory on the part of the learned Sessions Judge to appreciate the evidence of both the sessions cases and declare the judgement in both the cases simultaneously and on the same day.

9. Registry of this Court is directed to draw attention of the Sessions Judge of all the Districts in the State pointing out the decision of the Apex Court in case of Sudhir (supra) so that no apparent procedural error or irregularity may cause serious prejudice to any of the party. Therefore, the judgement under challenge is quashed and set aside solely on grounds, above discussed, without entering into merit of the acquittal recorded by the learned Sessions Judge.

10. With the observations and directions as aforesaid, rule is made absolute accordingly. Office is directed to send the writ forthwith to the concerned Sessions Judge. It will be open for the Petitioner-Original Complainant to intimate the learned Presiding Judge about the decision, if, he feels necessary.

11. It is clarified that because of the quashing of the order of acquittal, the accused may be taken into custody as they were on bail pending trial and they may be treated on bail till further formal orders are passed by the learned Trial Judge.

(C.K.Buch,J)
Jayanti*